

1
2
3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 MAURICE W. HOOKER,

8 Petitioner,

9 v.

10 ROBERT W. FOX, Warden,¹

11 Respondent.

Case No. [17-cv-00337-DMR](#) (PR)

**ORDER DISMISSING PETITION AS
SUCCESSIVE**

12 Petitioner, a state prisoner, has filed a petition for writ of habeas corpus to challenge the
13 restitution component of his 2008 conviction and resulting sentence in the Santa Clara County
14 Superior Court for inflicting corporal injury on his spouse, Cal. Penal Code § 273.5(a), and
15 inflicting corporal injury on a child, his stepdaughter, id. § 273d(a). He has also submitted an
16 application for leave to proceed in forma pauperis (“IFP”). Dkt. 2.

17 This action has been assigned to the undersigned magistrate judge. Petitioner consented to
18 magistrate judge jurisdiction in this matter. Dkt. 1 at 7.

19 Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may
20 conduct all proceedings in a case, including entry of judgment. Appeal will be directly to the
21 United States Court of Appeals for the Ninth Circuit. See 28 U.S.C. § 636(c)(3).

22 This is not Petitioner’s first challenge to his aforementioned conviction and sentence.² He
23 also challenged the same conviction and sentence in a habeas petition filed in Case No. C 11-1652
24

25 _____
26 ¹ Robert W. Fox, the current warden of the prison where Petitioner is incarcerated, has
been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

27 ² Petitioner has also filed a petition for a writ of mandate/prohibition pursuant to 28 U.S.C.
28 § 1651 and California Code of Civil Procedure § 1085 et seq. See Case No. C 14-04287 DMR
(PR). However, the court denied his petition for a writ of mandate/prohibition with prejudice for
lack of subject matter jurisdiction. Dkt. 6 in Case No. C 14-04287 DMR (PR).

1 SBA (PR). On July 16, 2014, the Honorable Sandra Brown Armstrong denied the first petition
2 on the merits. See Dkt. 13 in Case No. C 11-1652 SBA (PR).

3 On August 7, 2014, Petitioner again challenged the same conviction and sentence in
4 another habeas petition filed in Case No. 14-03598 DMR (PR). On November 12, 2014, the court
5 dismissed that action as successive pursuant to 28 U.S.C. § 2244(b). Dkt. 10 in Case No. 14-
6 03598 DMR (PR).

7 More recently, on August 5, 2016, Petitioner filed a document captioned “Petition For A
8 Writ of Habeas Corpus” in Case No. C 16-04432 DMR (PR). The court determined that the
9 petition did not challenge either the fact of Petitioner’s conviction or the length of his sentence,
10 but instead it pertained to the conditions of his confinement. See Dkt. 3 at 1 in Case No. C 16-
11 04432 DMR (PR). The court dismissed that action without prejudice to refiling as a civil rights
12 action under 42 U.S.C. § 1983.³ Id. at 2.

13 The instant habeas petition, which was filed on January 23, 2017, will be treated as a
14 second or successive petition. Dkt. 1.

15 A second or successive petition containing new claims may not be filed in the district court
16 unless Petitioner first obtains from the United States Court of Appeals an order authorizing the
17 district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Here, the instant petition
18 challenges the same conviction and sentence as his previous petitions, including the petition
19 denied on the merits by Judge Armstrong. See Dkt. 13 in Case No. C 11-1652 SBA (PR). The
20 instant petition raises new claims challenging the restitution component of his sentence, but
21 Petitioner has not presented an order from the Ninth Circuit Court of Appeals authorizing the court
22 to consider these claims. Therefore, the court is not authorized to consider the instant petition.
23 Accordingly, the instant petition is DISMISSED in its entirety.

24 If Petitioner wants to attempt to obtain the necessary order from the Ninth Circuit, he
25 should very clearly mark the first page of his document as a “MOTION FOR ORDER
26 AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE PETITION

27

28 ³ On December 7, 2016, Petitioner filed a civil rights action, which is still pending in this court. See Case No. C 16-07019 DMR (PR).

1 PURSUANT TO 28 U.S.C. § 2244(b)(3)(A)” rather than labeling it as a habeas petition because
2 the Ninth Circuit clerk’s office is apt to simply forward to this court any document labeled as a
3 habeas petition. He also should mail the motion to the Ninth Circuit at (95 Seventh Street, San
4 Francisco, California 94103), rather than to this court. In his motion to the Ninth Circuit, he
5 should explain how he meets the requirements of 28 U.S.C. § 2244(b).

6 **CONCLUSION**

7 For the forgoing reasons, the instant petition for a writ of habeas corpus is DISMISSED as
8 a second and successive petition.

9 Based solely on Petitioner’s lack of financial resources, his application to proceed IFP is
10 GRANTED. Dkt. 2.

11 The Clerk of the Court shall close the file.

12 This Order terminates Docket No. 2.

13 IT IS SO ORDERED.

14 Dated: January 27, 2017



15
16
17 DONNA M. RYU
18 United States Magistrate Judge
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAURICE W. HOOKER,
Plaintiff,
v.
M.E. SPEARMEN,
Defendant.

Case No. [4:17-cv-00337-DMR](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/27/2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Maurice W. Hooker ID: V-17290
California Medical Facility
P.O. Box 2500
Vacaville, CA 95696-2500

Dated: 1/27/2017

Susan Y. Soong
Clerk, United States District Court



By: _____
Ivy Lerma Garcia, Deputy Clerk to the
Honorable DONNA M. RYU